

**UNITED STATES COURT OF APPEALS**

**APR 26 2000**

**TENTH CIRCUIT**

**PATRICK FISHER**  
Clerk

BRENT B. GOLDEN,

Plaintiff - Appellant,  
vs.

DON WATERS, Sheriff of Carter  
County Detention a/k/a Don Water,

Defendant - Appellee.

No. 99-7124  
(D.C. No. 98-CV-298-S)  
(E.D. Okla.)

**ORDER AND JUDGMENT\***

Before **BRORBY, KELLY, and MURPHY**, Circuit Judges.\*\*

Plaintiff-Appellant Brent Golden, an inmate appearing pro se, appeals from the dismissal of his prisoner civil rights claim, 42 U.S.C. § 1983. Mr. Golden was stabbed in the neck with a pencil by another inmate, James Thompson, during a prison fight. He brought the instant case against the prison warden claiming a violation of the Eighth Amendment. The district court dismissed the claim as

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

without merit under 28 U.S.C. § 1915(e)(2), although the judge considered summary judgment affidavit evidence. Our jurisdiction arises under 28 U.S.C. § 1291 and we affirm, treating the case as an appeal from the grant of summary judgment.

In order to prevail on an Eighth Amendment claim against the warden for injuries caused by another inmate, Mr. Golden must show that prison officials acted with “deliberate indifference” for his health and safety. See Lopez v. LeMaster, 172 F.3d 756, 760 (10th Cir. 1999); see also Barrie v. Grand County, Utah, 119 F.3d 862, 868-69 (10th Cir. 1997) (applying this standard to pre-trial detainees). This test requires proof that the prison official subjectively knew of and disregarded “an excessive risk to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825, 837 (1994); see also Berry v. Muskogee, 900 F.2d 1489, 1496 (10th Cir. 1990) (official must disregard a known or obvious risk).

As stated in an affidavit by Defendant Waters, it was the practice of the prison to segregate inmates who posed a threat to other prisoners. Prior to plaintiff’s injury, Mr. Thompson had not threatened or assaulted any of the other prisoners. Therefore, Defendant Waters, who was not present at the time of the fight, did not consider him to be a threat to other prisoners. After the fight, both Mr. Golden and Mr. Thompson were placed in lockdown. Because Mr. Golden failed to demonstrate any deliberate indifference on the part of Defendant Waters,

the district court correctly dismissed his claim.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge